IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13641 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBALAL RATILAL PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. Special Civil Application No. 13641 of 2003
MR KM SHETH for Petitioner No. 1-2
MR. M.S. RAO, for the Respondent

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 04/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

Rule. Mr. M.S. Rao, learned counsel for the respondent, waives service of rule. The matter is taken up for final disposal at the request of both the sides.

2. The grievance of the petitioners is that though an application under Section 28A of the Land Acquisition Act, 1894 was made by the petitioners on 12.5.1998, as per copy at Annexure-A to the affidavit-in-reply, within the prescribed period, the matter has not been considered in accordance with the provisions of Section 28A(2) of the said Act.

3. According to the learned counsel for the petitioners, a certified copy of the award, on the basis of which, the application under Section 28A of the said Act was made was supplied to the concerned officer under the forwarding letter dated 18.1.2003, a copy of which is at Annexure-C to the petition. The learned counsel has shown the original endorsement of the Land Acquisition Officer showing the receipt of such letter which records that the certified copy of the award was being produced therewith. It appears that no formal order is communicated to the petitioners rejecting their application under Section 28A of the Act. The learned counsel for the respondent, however, submitted that there was a proforma order on the record, on the basis of which the respondent has taken up a stand that the application has been rejected. In paragraph 11 of the affidavit-in-reply it has been stated that on the basis of the notings on the file, the proforma of the order rejecting the applications was prepared but the order was not signed by the then Special Land Acquisition Officer. That Officer came to be transferred and was succeeded by the deponent. A copy of that proforma is order at Annexure-E to the affidavit-in-reply. That order, admittedly, was never signed. It cannot, therefore, be said that any decision was taken on the application of the petitioners. Admittedly, no such order was communicated to the petitioners presumably because the order never came into existence and it remained a proforma order.

4. In view of the fact the application under Section 28A(2) of the said Act was made within the prescribed time and no order is made thereon, it would be appropriate for the respondent to take a decision on the application taking into account the copy of the award already filed, by proceeding the application in

accordance with the provisions of Section 28A(2) of the Act. The respondent will, obviously, proceed with the matter on merits ignoring the proforma order which seems to have been passed merely on the footing that the certified copy of the award was not earlier presented. In fact, though the application under Section 28A of the said Act was made as far back as on 12.5.1998, the first notice came to be issued by the respondent in October, 2001. By that notice, the petitioners were required to remain present on 18.10.2001. There was no mention of the fact in that notice that the certified copy of the award was not submitted by the petitioners. Therefore, the petitioners were never put to notice about the fact that the certified copy of the award was not on record during the inquiry which was commenced under Section 28A(2) of the said Act on the basis of the application made by the petitioners.

5. We, therefore, direct that the respondent should decide the application of the petitioners made under Section 28A of the Act on 12.5.1998, a copy of which is at Annexure-A to the affidavit-in-reply, expeditiously, under the provisions of Section 28A(2) of the Act. Rule is made absolute accordingly with no order as to costs.

(R.K. ABICHANDANI, J)

(K.M. MEHTA, J)

(pkn)